

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF)	
CHANCE ALONG FARM FOR A LIMITED-)	FINDINGS OF FACT,
PURPOSE EXPERIMENTAL AQUACULTURE)	CONCLUSIONS OF LAW AND
LEASE LOCATED IN THE ROYAL RIVER)	DECISION
YARMOUTH, CUMBERLAND COUNTY, MAINE)	
MAINE		

On December 1, 2000, Chance Along Farm, represented by Peter J. Horne of Freeport, Maine, applied for a limited-purpose (experimental) commercial type, aquaculture lease totaling 0.007 acres in the coastal waters of the State of Maine, located at Yankee Marina and Boatyard in the upper Royal River, Yarmouth, Cumberland County, Maine. The applicant requested the lease for a term of three years for the purpose of cultivating American oysters, surf clams, quahogs, and European oysters clams using suspended culture techniques.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that the Commissioner of the Department of Marine Resources (DMR) may grant a limited-purpose lease if he determines that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

As provided for in 12 M.R.S.A. §6072-A(6), the Commissioner is not required to hold a public hearing on this application unless a hearing is requested in writing by five (5) or more interested parties. Notice of the application was published in the March 1, 2001 issue of the *Falmouth Forecaster* newspaper. One written comment with requesting a hearing was received during the comment period established in 12 M.R.S.A. §6072-A(5). The commenter provided a second letter that rescinded the hearing request.

Evidence Concerning the Nature and

Impact of the Proposed Lease

12 M.R.S.A. §6072-A(8) and the Department's regulations, Chapter 2.64(2) require the applicant to provide an application for a limited-purpose (experimental) aquaculture lease. This proposed experimental lease is sought to conduct commercial research and development on the viability of raising American oysters, surf clams, quahogs, and European oysters. The applicant requests the maximum lease term of three (3) years and 0.007 acres, having the approximate dimensions of 8 by 40 feet. The site would be located in two boat slips within the Yankee Marina and Boatyard dock system in Yarmouth, Cumberland County, Maine. The applicant requests authority to grow American oysters, surf clams, quahogs, and European oysters using suspended culture techniques.

The operation would include the use of two floating upweller units (FLUPSYs) tied to the marina pier within two boat slips. A single FLUPSY unit is an 8 by 20-foot float that holds circular silos, which contain seed shellfish. Seawater is pumped through the silos, creating a flow of water that provides nutrients to the seed shellfish.¹ Only seed size shellfish would be raised in the FLUPSY units. No bottom planting or grow-out to market sized shellfish is proposed. All seed shellfish would originate from a shellfish nursery or hatchery facility located in Maine.

Access to the proposed lease would be gained via the marina or from the Royal River by boat. The proposed lease would occupy the area of two boat slips that would be rented from the Yankee Marina and Boatyard. The owner of the marina provided a letter indicating no objection to shellfish aquaculture with the marina.

The application describes the subtidal water depths as 6 feet at mean low water (mlw). The bottom sediments are composed of firm mud and noted that the marina area is periodically dredged. Tidal currents are stated to be approximately 1½ knots at the maximum ebb and flood tides. No flora or fauna was described to occur within the proposed lease. Nearby local flora

¹ Shellfish sanitation regulations require a permit for the transfer of shellfish from a closed area to an open approved open area.

was listed as the green filamentous algae, Enteromorpha spp., on the nearby shore and some shell fragments.

A letter from the Yarmouth Public Works Administration expressed concern about the proposed lease location within an area classified as closed. This concern was in part due to its proximity to a Town sewage pumping station and an area with a high amount of boat traffic with untreated waste. He later rescinded his request in writing for a hearing on this matter when he found the marina has a pump out facility for sewage and he acquired a greater understanding of the proposal by communicating with the applicant.

A DMR Regional Biologist provided an evaluation of the proposed lease. He visited the proposed lease on October 4, 2000. The proposed lease site would be located within an active boat marina and in his opinion, the activities would be compatible with the existing marina area uses.

The Department's Assistant Aquaculture Environmental Coordinator (AAEC) visited the proposed site on April 26, 2001 and provided a site report on the proposed lease. The AAEC concurred with the applicant that the proposed 8 x 40 foot lease dimensions could pose interference with vessels navigating into adjacent boat slips. In consultation with the applicant the AAEC recommended that the alternative dimensions of 16 feet x 20 feet that would place the proposed FLUPSY units side-by-side instead of end-to-end would not pose interference with navigation. She provided differential global positioning system (dGPS) geodetic coordinates for the corner points on adjacent the marine dock #7 and finger pier #3, which the proposed lease would be adjacent. In the AAEC's opinion the proposed lease would not interfere with commercial or recreational fishing activities or with any designated Department of Inland Fisheries and Wildlife essential or significant wildlife habitats. The proposed lease is located within an area classified by the DMR Public Health Division as closed pursuant to DMR Regulation 95.03G, Closed Area No. 16, Royal River and Cousins River, Yarmouth and Freeport, effective March 29, 2001. This area is not anticipated to be reclassified to "open/approved" within the next three years according to the Director of the Department's Public Health Division.

Findings of Fact

The proposed lease is located within a marina and would occupy two adjacent boat slips. The proposed lease is located in shallow waters that have 6 feet of depth at mean low water. This was confirmed in a site visit to the area by the Department's Assistant Aquaculture Environmental Coordinator (AAEC), on April 26, 2001. A letter of permission for the applicant to rent space from the marina for the proposed aquaculture activities was provided by a representative of the marina. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of the riparian owner.

The proposed lease is not located within a navigation channel. The DMR Area Biologist provided confirmation that the activities would not interfere with boating in the area or marina activities. The AAEC recommended altering the proposed dimensions to reduce interference with vessels accessing an adjacent boat slip. Based on this evidence, and that the dimension be changed from 8 x 40 feet to 16 x 20 feet, I find that the lease will not unreasonably interfere with navigation in the area.

Only seed shellfish would be raised. According to personnel in the Department's Public Health Division the proposed lease area is not anticipated to be reclassified as "open" due to the heavy boat traffic within the marina area within the next three years. The application indicated that only marina-related activities currently take place on the proposed lease, when it is active. Based on the evidence that there is no commercial or recreational fishing or aquaculture leases within the vicinity of the proposed lease and that the area water quality classification is not anticipated to be reclassified as "open" within the next three years, I find that the lease will not unreasonably interfere with fishing, aquaculture leases, or other uses of the area.

The application describes the occurrence of filamentous green algae on the shore as the extent of the local flora and no fauna. The bottom sediments were described as a firm mud. Indigenous stocks of American oysters, surf clams, quahogs and European oysters from Maine sources are proposed to be used. Bottom planting of individual shellfish was not requested. The proposed lease is not located within any designated wildlife habitat regulated by the

Department of Inland Fisheries and Wildlife. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

The American oysters, surf clams, quahogs and European oysters proposed to be raised would come from shellfish nurseries or hatchery facilities located in Maine. Based on this evidence, I find that there is an available source of American oysters, surf clams, quahogs and European oysters.

According to the application, the proposed lease is located within 1,000 feet of land owned by the Town of Yarmouth. Land owned by the town designed as a park is located on the opposite side of the river from the marina. A cemetery owned by the Town is located downriver from the marina facility. According to the AAEC and Area Biologist, the proposed activities would not pose interference with the boating or existing uses of the area given the nature of the proposed activities within an existing commercially operated marina. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment given that the proposed lease site is located within 1,000 feet of municipally owned property, and not within 1,000' of any state or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;

5. The applicant has demonstrated that there is an available source of American oysters, surf clams, quahogs and European oysters; and
6. The aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

Decision

Based on the foregoing, the Commissioner grants the requested limited-purpose commercial lease of 0.007 acres (16 x 20 feet) to the applicant for a period of three (3) years from the date of this decision, for the purposes of cultivating American oysters, surf clams, quahogs and European oysters using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$5,000, conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or

requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources